IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 2.3.2006

CORAM

THE HONOURABLE MR. JUSTICE K. MOHAN RAM

WRIT PETITION NO.5697 OF 2006
AND
W.P.M.P.NO.6182 OF 2006

Pushpanjali Silks Private Limited
rep. by its Director
Sanjiv Kumar Jhunjhunwala
F-7, Swastik Manandi Arcade
401-2, Subedar Chatram Road
Seshadripuram
Bangalore - 560 020. ... Petitioner

Vs.

1. Chief Commissioner of Customs
   Custom House
   No.60, Rajaji Salai
   Chennai - 600 001.

2. Commissioner of Customs (Imports)
   Custom House
   No.60, Rajaji Salai
   Chennai - 600 001.

3. The Assistant Commissioner of Customs
   Group 3 & 4
   Custom House
   No.60, Rajaji Salai
   Chennai - 600 001. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. Habibullah Basha
Senior Counsel for
Ms. L. Maithili

For Respondents : Mr. V.T. Gopalan
Additional Solicitor General
for Mr. T.S. Sivagnanam, SCGSC

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O R D E R

The above writ petition has been filed praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the third respondent culminating in his communication bearing F.No.S.Misc.46/2006-Gr.3 & 4 dated 24.2.2006 and quash the same and direct the third respondent to release Mulberry Raw Silk imported under Bill of Entry No.875113 dated 15.9.2005 as per Sales Contract No.IE/PSR-RS03/2005, dated 17.2.2005, in terms of the order of the Commissioner of Customs (Appeals) being order-in-Appeal No.C.CUS.97/06 bearing Ref.No.C3/49/0/2006-SEA dated 16.2.2006.

2. The short facts of the case as culled out from the affidavit filed in support of the above writ petition are as follows:-

The petitioner entered into a sales contract bearing No.IE/PSR-RS03/2005 dated 17.2.2005 with its supplier, M/s.International Enterprises, Hongkong for the supply of 2,77,000 Kgs. (277 Mts.) of Mulberry raw silk of 3A and above grade. The entire contracted quantity was required to be shipped by 30.9.2006 and the price for the entire contracted quantity was fixed at USD 13.50/Kg-CIF. Pursuant to the agreement, the petitioner had imported about 60% of the total contracted quantity. The Bills of Entry filed by the petitioner were assessed after enhancing the value to USD 13.94/Kg-CIF. According to the petitioner, in view of the urgency for release of the consignments, it accepted the enhancement and cleared the goods. The petitioner, in continuation of imports under the same contract dated 17.2.2005 filed Bill of Entry No.875113 dated 15.9.2005 for clearance of 9095.10 Kgs. of Mulberry raw silk at USD 13.50/Kg-CIF. But the Department disputed the value of the goods and issued a letter dated 22.11.2005 granting permission to the petitioner to take delivery of the goods imported under the aforesaid Bill of Entry after executing a simple provisional bond, pending investigation. Thereafter, the petitioner made several representations to the respondents.

3. It is the further case of the petitioner that the show cause notice bearing No.SEC.NO(SCN)/ GR.3&4/7/2005 (MAIn NO) SCN/GR3&4/470/2005, JOB No.4602/2005 dated 29.11.2005 was issued seeking to enhance the value to USD 22.36/Kg-CIF. Since the final orders were not passed, the petitioner filed a written representations on 24.1.2006 before the second respondent requesting for immediate disposal of the matter by the third respondent, which was followed by a representation by the petitioner's counsel before the second respondent.

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Finally, on 25.1.2006, the third respondent passed order in original No.4579/2006 Gr.3 & 4, F.No.S.MISC.232/2005 GR.3 & 4/S8/231/2005 GR.3 & 4, dated 25.1.2006 rejecting the transaction value declared by the petitioner and fixing the value for the purpose of assessment at USD 22.36/Kg-CIF. Aggrieved by that, the petitioner filed an appeal before the Commissioner of Customs (Appeals), Chennai along with a request for early hearing/disposal of the appeal. The Appellate Commissioner passed Order-in-Appeal No.C.CUS.97/06 bearing Ref.No.C3/49/0/2006-SEA dated 16.2.2006 setting aside the order of the third respondent and allowed the appeal filed by the petitioner, holding that the goods imported under contract dated 17.2.2005 were required to be assessed on the basis of the value of USD 13.94/Kg-CIF, as had been accepted in the past by the petitioner. Immediately, on receipt of this order, the petitioner addressed a letter to the second and third respondent on 20.2.2006 enclosing a copy of the aforesaid order of the Appellate Commissioner and requested for immediate assessment and release of the goods in terms of that order. Thereafter, the third respondent sent a proceeding dated 24.2.2006 in F.No.S Misc.46/2006-Gr.3&4 to the petitioner, which reads as follows:-

> " Sub: Request for release of goods covered by B/E No.875113 dated 15.9.2005-Reg.
>
> Kind reference is invited to your letter dated 21.2.2006 requesting for release of mulberry raw silk covered by the above said bill of entry in pursuance of Order-in-Appeal C.Cus.No.97/2006 dated 16.2.2006.
>
> In this regard, I am directed to inform you that it has been decided to release your goods provisionally with 50% Bank Guarantee for the differential duty between unit price USD 13.5/Kg. and USD 22.36/Kg., pending acceptance of the Order-in-Appeal passed by Commissioner (Appeals)."

The above said order is impugned in the above writ petition.

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4. When the matter came up for admission on 1.3.2006, this Court directed the petitioner to serve notice on the office of the Additional Solicitor General along with all the necessary papers and at the request of Mr.T.S.Sivagnanam, learned Senior Central Government Standing Counsel, the matter was adjourned to 2.3.2006 to enable him to get instructions from the Department. When the matter is again listed today, Mr. V.T.Gopalan, learned Additional Solicitor General appeared for Mr.T.S.Sivagnanam.

5. Mr. Habibulla Basha, learned Senior Counsel appearing for the petitioner relied upon the judgment of the Supreme Court in UNION OF INDIA VS. KAMLAKSHI FINANCE CORPORATION LTD., reported in 1991(55) E.L.T. 433 (S.C.) and submitted that the impugned order is liable to be quashed. The learned Senior Counsel referred to the following passage in the above said judgment.

> " The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to then in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department- in itself an objectionable phrase – and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not

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followed, the result will only be undue harassment to assessees and chaos in administration of tax laws."

6. When the impugned order and the above said passage from the judgment of the Supreme Court was pointed out to the learned Additional Solicitor General, the learned Additional Solicitor General fairly conceded that the impugned order of the third respondent cannot be sustained. But however, he submitted that at least a weeks time may be given to the Department to take a decision as to whether an appeal is to be filed or not.

7. Accordingly, without going into the merits of the matter, the impugned order, which is prima facie bad in law is set aside. The third respondent is directed to release the Mulberry Raw Silk imported under Bill of Entry No.875113 dated 15.9.2005 as per Sales Contract No.IE/PSR-RS03/2005, dated 17.2.2005, in terms of the order of the Commissioner of Customs (Appeals) being order-in-Appeal No.C.CUS.97/06 bearing Ref.No.C3/49/0/2006-SEA dated 16.2.2006, on or before 10.3.2006, if the Department either decides not to file an appeal against the Order-in-Appeal passed by the Commissioner (Appeals) or fails to get any order of stay in such appeal.

8. With the above directions, the writ petition is allowed. Consequently, connected WPMP is closed. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

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   Group 3 & 4
   Custom House
   No.60, Rajaji Salai
   Chennai - 600 001.

+ one cc to Mr. T.S. Sivagnanam, Advocate sr no. 9872
+ one cc to Ms. L. Maithili, Advocate sr no. 9850

NG(CO)
NM(03.03.2006)

W.P.No.5697 of 2006

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